

Petition of the Town of Warren pursuant to G.L. c. 159, § 24, requesting that the Department of Telecommunications and Energy allow the Town of Warren to include Sturbridge in its Primary Calling Area.

APPEARANCES: Board of Selectmen

Town of Warren 48 High Street

Warren, MA 01083

Petitioner

I. INTRODUCTION

On February 6, 1997, pursuant to G.L. c. 159, § 24, the Town of Warren ("Petitioner") filed a petition with the Department of Public Utilities (now the Department of Telecommunications and Energy) ("Department") requesting that the Department order New England Telephone and Telegraph Company d/b/a/ Bell Atlantic ("Bell Atlantic" or "Company") to provide toll-free access to Warren customers' home and contiguous exchanges. Specifically, the Petitioner requests that their primary calling area ("PCA")⁽¹⁾ be expanded to include Sturbridge.⁽²⁾

On April 28, 1997, pursuant to notice duly issued, the Department held a public hearing in Warren to give interested persons an opportunity to be heard. Because Bell Atlantic would have to implement any Department-ordered PCA change, Bell Atlantic filed the testimony of Philip J. Wood, director of regulatory policy, on June 6, 1997. Additionally the Company responded to Department-issued information requests.⁽³⁾

II. POSITIONS OF THE PARTIES

A. Petitioners

The Petitioners argue that Warren residents and businesses should be permitted to call Sturbridge without incurring long distance charges (Tr. at 8-11, 13). The Petitioner states that expanding Warren customers' PCA would allow Warren (1) to regionalize certain services, such as animal control, and (2) to have toll-free access to local hospitals, doctors, transportation services and state agency services, all of which are available in the more-populated Town of Sturbridge (id. at 9-11).

B. Bell Atlantic

The Company argues that it should not be required to expand Warren's PCA

(Exh. DTE-11, at 4). Bell Atlantic claims that it is prohibited from offering toll-free calling between the Warren and Sturbridge exchanges due to the LATA boundary, which defines the geographic area within which Bell Atlantic currently is authorized to operate (id. at 7). The Company contends that because the Warren exchange is located in the western LATA and the Sturbridge exchange is located in the eastern LATA, it would be necessary for the Company to obtain a waiver of the interLATA restriction imposed by the federal courts in 1984 to govern the divestiture of Bell Operating Companies from AT&T (id. at 7-8).

Moreover, the Company notes that the Department has never required Bell Atlantic to seek a waiver to expand the local calling areas across the LATA boundaries (id. at 8

citing D.P.U. 89-300-C). The Company states that the Department has denied expansion of PCAs that were desired because customers wanted to avoid toll charges to call metropolitan areas offering services not obtained locally (Exh. DTE-11, at 6).

III. STANDARD OF REVIEW

Prior to 1990, a PCA included all exchanges that a customer (who subscribed to basic unlimited residence or business service) could call without incurring a toll or message unit charge. In 1990, the Department found that for reasons of simplicity and fairness, a more consistent, statewide concept of the local calling area was necessary. Therefore, the Department determined that a local calling area should be based on the customer's home and contiguous exchanges. New England Telephone and Telegraph Company ("NET"), D.P.U. 89-300, at 52, 64 (1990).

While the Department recognized the importance of adopting a standard definition of the PCA for all exchanges within the Commonwealth, it also expressed an understanding that the expansion of PCAs across LATA boundaries would require NET (now Bell Atlantic-Massachusetts) to take, at a minimum, the extra administrative steps associated with obtaining waivers of the federal requirements prohibiting such expansion. NET, D.P.U. 89-300-C at 4 (1990). The Department found that a waiver to expand PCAs across LATA boundaries should be sought where there was evidence of customer interest in expanding the PCA and a need for calling to a contiguous exchange in another LATA. Id.

IV. ANALYSIS AND FINDINGS

In its petition, the Town of Warren indicated that customer interest exists to include the contiguous exchange of Sturbridge in the Warren PCA. The Department finds that the Petitioner has demonstrated customer interest in having toll-free access to local hospitals, doctors, transportation services, state agency services, and in the ability to regionalize town services. Therefore, the Department finds that Petitioner has met the burden of demonstrating customer interest to have Sturbridge within its PCA.

Regarding the requirement to demonstrate a need for such an expansion of the PCA across LATA boundaries, the Petitioner states that toll-free access to medical facilities, state police and state agency services, requires the inclusion of Sturbridge in Warren's PCA. Although the Department has consistently denied requests to expand PCAs beyond the home and contiguous exchanges, this case is different in that it does not involve expansion of the Petitioner's PCA beyond its home and contiguous exchange. The Department previously has found that customers should be able to call their home and contiguous exchanges without incurring a toll charge. D.P.U. 89-300, at 64-68. Until now, Warren customers have not received what customers throughout the Commonwealth already enjoy--access without extra charge to their home and contiguous exchanges. Only because Warren lies immediately to the west of the east-west LATA boundary are telephone customers cut off from PCA access to contiguous exchanges to the east. This Order does no more than set in motion the process to rectify that anomaly by granting Warren customers free access to their home and contiguous exchanges.

However, because the Petitioner's request does involve expanding its PCA across a LATA boundary, federal approval must also be granted. Section 601 of the Telecommunications Act of 1996 shifts the authority to establish or modify LATA boundaries from the United States District Court to the Federal Communications Commission. Accordingly, the Department directs Bell Atlantic to request all waivers necessary for Bell Atlantic to offer toll-free access across the LATA boundary between Warren and Sturbridge. The Company is directed to seek such waivers within three weeks of the date of this Order, and to request expedited treatment. A copy of Bell Atlantic's petition shall be served on the Department and the Board of Selectmen of the Town of Warren.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-

Massachusetts seek a waiver of federal requirements so that Sturbridge may be included in the

Town of Warren's primary calling area; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a/

Bell Atlantic-Massachusetts include Sturbridge in the Town of Warren's primary calling area,

once FCC approval is granted.

By Order of the Department

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the

expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The PCA includes the exchanges that a customer who subscribes to Bell Atlantic's basic unlimited service can call without incurring a toll or local per message/per minute charge. New England Telephone and Telegraph Company, D.P.U. 89-300, at 52 (1990).
2. Sturbridge is a contiguous exchange to Warren, but is not included in its PCA because Warren is in the Western LATA (consisting of the 413 area code), and Sturbridge is in the Eastern LATA (consisting of the 617/781/508/978 area codes).
3. The Department hereby admits into evidence as exhibits DTE-1 through DTE-10, the Company's responses to the Department's information requests, and as Exh. DTE-11, the testimony of Philip J. Wood.